IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.463 of 2003

Smt. Pratima Awasthi, widow of Late Ramesh Kumar Awasthi, resident of "Awasthi Niwas", Manas Path, Khajekala, P.S. Khajekala, District Town Patna. (Claimant) – Appellant.

Versus

1. Bhikhari Rai, son of late Raj Ballam Rai, resident of Madarpur, P.O. Gauspur, Via Hajipur, District- Vaishali (Owner of Truckd No. BR-31-7529) (Opposite Party No.1)—Respondent.
2. The New India Insurance Company Ltd Through Divisional Manager, Division No. II (Code- 540800) Govind Bhawan, New Dak Bunglow Road, Patna- 800001.
3. Arvind Kumar Rai, son of Sri Harendra Rai, resident of village- Chaknaur, P.O.Belwa Kowari, District- Vaishali (Driver of Truck No. BR-31-7529) (Opposite Party No.3) … Respondent.

For Appellant : M/S Ajay Kumar & Mukesh Pd. Singh, Advocates.
For Respondent No.2 : M/S R.K.P.Singh & Manish Kumar, Advocates.

8/ 25-11-2008 Heard learned counsel for the appellant (claimant) and learned counsel for respondent no.2 (Insurance Company). In spite of valid serviced of notice, other respondents have not appeared.

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This miscellaneous appeal has been filed challenging that part of order dated 30.08.2003 by which the learned Additional District Judge-8 –cum- Motor Vehicle Accident Claim Tribunal, Patna, while allowing appellant's Claim Case No. 89 of 1994 (10/02), allowed the interest on the amount of compensation only at the rate of 6% per annum and that too from 02.03.2002 although it should have been, according to the appellant, @ 9% per annum from the date of institution of the claim case on 16.11.1994 till the date of payment.

Learned counsel for the appellant submits that although the claim case was filed in the year 1994 and the Insurance Company, which was opposite party in that case, appeared in 1996 but filed its written statement after about two years and two months, in the

year 1998. It was also claimed that the case could not be taken up due to vacancy in the court for one year and ten months between 1999 to 2001 and hence for the aforesaid four years (two years two months plus one year ten months) the appellant, who was the claimant, could not legally be held to be guilty of causing delay in hearing of the case. However, the learned court below has considered the matter in detail and fully appreciating the factual aspect of the matter has come to the definite conclusion that the case was delayed due to the fault of the claimant from 1994 to 2002 and hence interest was payable to the claimant only from 02.03.2002 till the date of payment of the compensation amount. In the said circumstances this Court does not find any justification to interfere with that aspect of the order under challenge.

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So far the rate of interest is concerned, the claimant relied upon various decisions of the Hon'ble Apex Court such as in case of **Kaushnuma Begum (Smt.) and others Vs. New India Assurance Co. Ltd. and others, reported in (2001) 2 SCC-9 (paragraph-24**) as well as in case of **Abati Bezbarvah vs. Dy. Director General, Geological Survey of India and another, reported in (2003)3 SCC-148 (Paragraphs 7 and 8**) and also in case of **Divisional Controller, KSRTC Vs. Mahadeva Shetty and another, reported in (2003) 7 SCC- 197 (paragraphs 4 and 24)** specifically held that earlier the rate of interest was 6% but due to the rise in the rate of interest it should be 9% per annum.

On the other hand learned counsel for respondent Insurance Company submits that the rate of interest has to be fixed

considering the lending rate of the Bank at the relevant period and not whimsically. However, the Hon'ble Apex Court has found that the rate of interest on the compensation amount was earlier at the rate of 6% per annum, but now in the present situation the amount would be payable @ 9% per annum (simple interest). The same has to be followed by this Court as well as the learned court below.

In view of the aforesaid facts and circumstances the instant appeal is disposed of with only one modification in the impugned order that the interest on the compensation amount shall be at the simple rate of 9% per annum payable from 02.03.2002 till the date of payment is made.

Admittedly Rs. 25,000/- has already been paid by the Insurance Company to the claimant and a further amount of Rs. 25,000/- deposited at the time of filing of Misc.Appeal No. 443 of 2003 by the Insurance Company against the same impugned order has been permitted by this Court to be withdrawn by the claimant, hence the learned court below shall calculate the amount of compensation and interest considering the said payments.

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BTiwary/ **(S. N. Hussain, J)**